

AG ISSUES UPDATE

Edited by Sara Hricko

November 2020

USApple Updates October-November

2020 Election & Key Apple Priorities

What do the elections mean for the apple industry and our top priorities?

Except for a few retiring members and a handful of New York and California districts that have not been called, most "apple" members and key committee leaders will return to Washington in January.

One notable exception, House Agriculture Committee Chairman Collin Peterson (D-MN) lost his re-election bid. California Representative Jim Costa and Georgia Representative David Scott are vying for the chairmanship. USApple has worked closely with Costa who understands the industry and chairs the Specialty Crop Caucus.

Senate chairmanships and leadership will not be decided until the January 5th run-offs in Georgia. The most likely scenario is that Republicans will maintain control, though if Democrats were to win both Georgia seats it would give them 50 with Vice President Harris breaking the tie.

Senator Thom Tillis (R-NC) is expected to win his race, though it has not been officially called as North Carolina allows overseas ballots to be received until November 12. This is good news for agriculture labor reform as Tillis has championed our cause and was in the process of working with groups, including USApple and his Senate colleagues, to craft legislation when COVID hit.

USApple will work closely with new and returning members of Congress as well as the incoming Biden Administration and will continue our focus on agricultural labor reform, equitable treatment for apples in COVID relief packages and Farm Bill programs and the critical importance of a strong export market. - *Apple Bites 12 November, 2020*

USApple Releases First Report on 2020 Crop - Fresh Apple Holdings Down 12%

As reported in the November 2020 edition of Market News, total U.S. apple holdings are 162.5 million bushels. This represents a decline of 10.2% or 18.5 million bushels compared to November 2019 storage levels.

Both fresh and processing apple holdings are down year-over-year declining by 15.7 million bushels (11.8%) and 2.8 million bushels (5.8%), respectively.

Washington alone accounted for 83% of the reduced levels with total holdings in that state down 15.3 million bushels or 10.5%.

Stocks of Red Delicious are down 24% compared to last year -- a decline of more than 8 million bushels. Conversely, Cosmic Crisps holdings are up by almost 1.7 million bushels or 433%. - *Apple Bites 12 November, 2020*

DOL Announces Final Rule Reforming AEWB Calculation

Today, USApple Senior Vice President Diane Kurrle participated in a call hosted by the White House and Departments of Agriculture (USDA) and Labor (DOL) announcing a final rule updating the methodology for calculating the wage rate in the H-2A program. For nearly all H-2A jobs including harvest workers, the Adverse Effect Wage Rate (AEWR) will be frozen at the 2020 level for 2021 and 2022.

Beginning in 2023, DOL will adjust these AEWRs by the percentage change in the Bureau of Labor Statistics' Employment Cost Index (ECI) for wages and salaries for the preceding 12-month period. This should provide some relief for the apple industry as average increases to the ECI from 2015 to 2019 averaged 2.54% compared to the Labor Survey which increased by 4.48%. Going forward all states will increase by the same percentage year over year but state and regional variations in wage rates will remain based on the 2020 rates.

This announcement was expected as USDA recently announced it would discontinue the Farm Labor Survey. The rule is scheduled to go into effect at the end of the year though it could be challenged in court or rescinded by a future Administration.

The DOL intends to issue a second final rule to finalize the remainder of the July 29, 2019 proposed rule that will govern other aspects of the certification of agricultural labor or services performed by H-2A workers, and enforcement of the contractual obligations applicable to employers of such nonimmigrant workers. USApple provided comments on the proposed rule, advocating for wage relief and general streamlining of the program. - *Apple Bites 2 November, 2020*

USDA Announces Extension of Farmers to Families Food Box Program

On Friday, the U.S. Department of Agriculture (USDA) announced a fourth round of purchases for the USDA Farmers to Families Food Box Program. This is good news as many in the apple industry have benefited from the program and USApple joined other produce groups in encouraging USDA to extend funding for the program beyond October. USDA is issuing solicitations for the fourth round to existing Basic Ordering Agreement (BOA) holders and expects to award contracts by Oct. 30 for deliveries of food boxes from Nov. 1 through Dec. 31, 2020.

As with previous rounds, USDA will allocate boxes based on the need of the individual state. The program will continue the purchase of combination boxes to include fresh produce, dairy products, fluid milk and meat products. - *Apple Bites 28 October, 2020*

USApple Donates to Emergency Feeding Program for School Kids

USApple has donated funding from its grant program, Apples4Ed, to the School Nutrition Foundation's "Help Feed School Kids Now!" emergency feeding campaign. The \$20,000 donation will aid SNF's frontline work to ensure that students who depend on the National School Lunch Program do not go hungry while in-person classrooms remain closed due to COVID-19. Money will help purchase food and packaging for grab-and-go meals, mobile carts and kiosks for curbside service, or supplies and personal protective equipment so school children can remain fed and safe. - *Apple Bites 28 October, 2020*

USDA Hosts USApple Crop Insurance Webinar

With support from USApple, USDA's National Institute of Food and Agriculture recently awarded a \$5.2 million grant to develop a comprehensive fire blight management strategy for American fruit growers. At the request of USApple, USDA's Risk Management Agency (RMA) recently hosted a webinar on the proposed changes to the apple crop insurance policy. The goal of the listening session was to solicit feedback from relevant stakeholders prior to the release of an official rule.

The proposed revisions are designed to address program vulnerabilities stemming from high loss ratios and increasing premium costs. Over the last several years, various regions across the U.S. have seen loss ratios exceed 1. That is, the amounts paid to farmers who make a claim (indemnities) has been greater than the amounts paid for coverage (premiums). If not addressed in a considered and equitable way, this unsustainable trend could bankrupt the program or lead to unaffordable insurance policies.

One significant change would allow policy holders to elect coverage levels by type (e.g. fresh versus processing). Another would account for the value of salvaged apples and reduce the indemnity accordingly.

Currently, the RMA is targeting a rule for the 2022 crop year but may push implementation to 2023 depending on feedback. Once the final rule is issued in the Federal Register, USApple, our members, and other interested parties will have a finite period to submit official comments. - *Apple Bites 28 October, 2020*

Optimizing Special Depreciation for Your Orchards

By Dario Arezzo, Senior Tax Consultant, Farm Credit East

2020 is shaping up to be a potentially high-income year for some farmers across the country, especially given the latest round of Coronavirus Food Assistance Program (CFAP) payments. One tool that will likely come into play for fruit growers this year is the ability to depreciate 100 percent of the cost of new orchards.

Most farmers are familiar with the uniform capitalization rules (UCR). Typically, when orchards are acquired before the trees have reached an income-producing level, the pre-productive costs must be capitalized. But a farmer may choose to elect out of the rules at the cost of a slower depreciation method known as the alternative depreciation system (ADS). Under ADS, depreciation on the trees begins when they reach an income producing phase that makes commercial sense to harvest.

Since the PATH Act of 2015, the good news is that most farming businesses with annual gross receipts of \$26 million or less for the three preceding tax years are **not subject to the UCR**.¹ In other words, those pre-productive costs, such as fertilizer and labor, can be immediately expensed for these farmers.

As mentioned above, even if a grower is not subject to UCR, the trees are not typically depreciable until they become commercially viable. However, prior to January 1, 2023, fruit growers are eligible to claim 100 percent special depreciation allowance (SDA) on the cost of their plantings. 2020 may be the year that it makes sense to take advantage of this tool. For example, if a farmer planted \$500,000 of orchards in 2020, the planting can be 100 percent depreciated. From a multi-year perspective, this tool is available until 2026, although it begins to phase out in 2023 as the chart below indicates.

Year	Special Depreciation Allowance (Orchards)
2020	100%
2021	100%
2022	100%
2023	80%
2024	60%
2025	40%
2026	20%
2027	0%

It is important to keep in mind that many states do not follow the federal rules on SDA and thus prudent tax planning at the state level must also be considered.

Farmers should take a multi-year approach to tax planning in 2020, utilizing tools like SDA in a manner that makes sense for the long-term.

For more information, visit FarmCreditEast.com/tax to get in touch with a Farm Credit East tax specialist.

¹ There are exceptions for farms defined as tax shelters under the rules.

² In year 3, they could choose to take regular SDA. Examples assume half-year convention. – *USApple Member Alert 27 October, 2020*

Farm Bureau updates November 2020

Apply Now for Second Round of Federal COVID-19 Aid for Farms

The U.S. Department of Agriculture has opened a second round of its Coronavirus Food Assistance Program, which provides direct payments to farmers to help with losses suffered due to the COVID-19 pandemic. USDA is accepting applications for its \$14 billion "CFAP 2" program now through Dec. 11.

Payments are limited to \$250,000 per person or entity, with some exceptions for corporations, limited liability companies, or limited partnerships in which members actively provide labor or management. There is an Adjusted Gross Income limit of \$900,000, except for producers who make at least 75 percent of their income from farming. Applicants must also meet conservation compliance provisions.

The following commodities are eligible for the CFAP 2 program, including some that were not eligible for the first round. Click each category for more details on payments.

- Row crops: alfalfa, amaranth grain, barley, buckwheat, canola, corn, Extra Long Staple (ELS) cotton, upland cotton, crambe (colewort), einkorn, emmer, flax, guar, hemp, industrial rice, kenaf, khorasan, millet, mustard, oats, peanuts, quinoa, rapeseed, rice, sweet rice, wild rice, rye, safflower, sesame, sorghum, soybeans, speltz, sugar beets, sugarcane, sunflowers, teff, triticale, and all classes of wheat.
- Dairy: Cow and goat milk are both eligible.
- Broilers and eggs

- Livestock: beef cattle, hogs and pigs, and lambs and sheep.
- Specialty crops: More than 230 fruit, vegetable, horticulture and tree nut crops as well as honey, maple sap and indigo.
- Wool
- Specialty livestock: alpacas, bison, buffalo, beefalo, deer, ducks, elk, emus, geese, goats, guinea pigs, llamas, mink (including pelts), mohair, ostrich, pheasants, quail, rabbits, reindeer, and turkey.
- Floriculture and nursery crops
- Aquaculture
- Tobacco

Apply online or through your USDA Service Center. You can also contact USDA at 877.508.8364. If you applied for the first CFAP program, the application process will be easier for the second round because USDA likely has many of your documents already on file.

SBA Simplifies Forgiveness for Some Relief Loans

The U.S. Small Business Administration has simplified the process of applying for some of its signature COVID-19 relief loans to be forgiven.

The agency recently issued a final interim rule that allows a one-page, simplified application to be used to apply for forgiveness of Paycheck Protection Program loans of up to \$50,000. The PPP program provided forgivable loans for farms and other small businesses affected by the COVID-19 pandemic to continue to pay employees and certain, other expenses.

Farm Bureau is continuing to advocate for legislation that would allow the simplified application to be used for loans of up to \$150,000, a move that would alleviate hours of paperwork for borrowers.

Senate Committee Releases Agriculture Spending Plan

The U.S. Senate Appropriations Committee has released its proposal for funding agriculture programs through the 2021 federal fiscal year.

The fiscal year began Oct. 1; however, the federal government is operating on a continuing resolution that keeps it funded through Dec. 11.

The Senate's proposal includes \$23.33 billion in discretionary funding for agriculture, including funding for agriculture research, FSA programs, rural development, Animal and Plant Health Inspection Service, Food Safety and Inspection Service, the Food and Drug Administration and more. The measure also includes a Farm Bureau-supported provision that would prohibit the U.S. Department of Transportation from enforcing electronic logging devices on livestock and insect haulers.

Farm Bureau is reviewing the Senate plan and will work with both the House and Senate to secure agriculture's priorities as they begin negotiating an omnibus spending bill.

Farm Bureau Supports Greater Flexibility for Ag Haulers

Farm Bureau is putting its support behind a proposal in Congress that would modernize the exemption to hours of service rules for haulers of livestock and agricultural commodities.

Specifically, the HAULS Act, introduced by Sen. Deb Fischer of Nebraska, would make three key changes to update the rules:

- Ensure the exemption applies year-round, not just during certain "planting and harvesting periods."
- Provide a 150-air-miles exemption from hours-of-service regulations on the backend of hauls. Such an exemption currently applies to the start of a haul.
- Update of the definition of an agricultural commodity for purposes of determining eligible freight for the agricultural exemption.

Farm Bureau joined more than 100 agricultural organizations in voicing support for the legislation in a letter to Fischer.

Federal Funding Bill Replenishes Farm Program Funding

A recently adopted federal spending bill replenishes funding for farm safety net and support programs that help farms remain in operation through disasters and times of crisis.

Congress recently passed and President Donald Trump signed a measure to continue funding the federal government that included a provision reimbursing the Commodity Credit Corporation, the federal government's primary funding mechanism for many farm bill programs. Without the reimbursement, USDA may not have had enough funds to make farm program payments.

Broadband Bill Signed by Governor

A bill that aims to expand access to high-speed internet in rural communities—one of Pennsylvania Farm Bureau's chief legislative priorities—is now law.

House Bill 2438, sponsored by Rep. Clint Owlett of Tioga County, cleared the General Assembly recently and was signed by Gov. Tom Wolf this week.

The measure makes it easier for rural cooperatives to offer broadband service by allowing them to use their existing utility easements to install fiber-optic lines without having to renegotiate agreements. Cooperatives would still have to renegotiate if the installation of broadband service results in the need for new infrastructure, such as new poles.

Expanding broadband access is among Pennsylvania Farm Bureau's chief legislative priorities. While high-speed internet is becoming more and more essential to agriculture, business and daily life—a reality underscored by the COVID-19 pandemic—many rural communities lack adequate access.

Most General Assembly Caucus Choose Leadership

Three of the General Assembly's four caucus have selected their leadership for next year, with women making historic rises.

Senate Republicans selected Kim Ward, of Westmoreland County, as majority leader, replacing Jake Corman, of Centre County, who was elected as President Pro Tempore of the Senate—the highest

ranking position in the body. Ward's selection as majority leader is the first time that a woman has held that position in the Senate.

House Democrats selected Joanna McClinton, of Philadelphia, as Democratic leader—the first time a woman has held that position.

Also in the Senate, Republicans selected Pat Browne of Lehigh County as Appropriations Chair; John Gordner, of Columbia County, as Majority Whip; Bob Mensch, of Montgomery County, as Majority Caucus Chairman; and Ryan Aument as Majority Caucus Secretary.

In the House, Republicans selected Bryan Cutler, of Lancaster County, as Speaker of the House; Kerry Benninghoff, of Centre County as Majority Leader; Stan Saylor of York County as Appropriations Chair; Donna Oberlander of Clarion County as Majority Whip; Marty Causer, of McKean County as Policy Chair; Mike Reese, of Westmoreland County as Caucus Chairman; Martina White, of Philadelphia, as Caucus Secretary; and Kurt Masser of Northumberland County as Caucus Administrator.

Also in the House, Democrats selected Jordan Harris, of Philadelphia County, as Democratic Whip; Matt Bradford, of Montgomery County, as Democratic Appropriations Chair; Dan Miller, of Allegheny County, as Democratic Caucus Chair; Tina Davis, of Bucks County, as Democratic Caucus Secretary; Mike Schlossberg, of Lehigh County as Caucus Administrator; and Ryan Bizzarro of Erie County as Democratic Policy Chair.

Senate Democrats caucused on the week of November 16th; results to be announced.

MAV Width Bill Signed Into Law

A Farm Bureau-supported bill that would change the state's vehicle code regarding the width of multipurpose agricultural vehicles (MAVs), commonly known as ATVs or side-by-sides, has become law.

Gov. Tom Wolf this week signed Senate Bill 995, sponsored by Sen. Dan Laughlin of Erie County, following its passage by the state House. The state Senate passed the bill earlier this year.

Currently, the state vehicle code requires that MAVs be no wider than 62 inches; however, newer models of side-by-sides are often up to 66 inches wide. Senate Bill 995, changes the vehicle code definition of an MAV to include vehicles up to 66 inches wide.

Farmers are allowed to operate MAVs in a limited capacity on roadways as part of their farming operations. Pennsylvania Farm Bureau wanted to make sure that farmers who had newer models of MAVs would still be able to legally move those vehicles on the road.

Voting Begins for PSU Trustees

Voting for agricultural organization delegates to the Penn State Board of Trustees has started.

Mail in ballots were sent to delegates representing each county beginning Oct. 1 and are due back by the end of the month.

Pennsylvania Farm Bureau's Board of Directors has endorsed Lynn Dietrich, a farmer, auctioneer and retired engineer; and Randall Black, president and CEO of First Citizens Community Bank. Dietrich is

seeking a second term on the board and Black is running to fill an open trustee position. Both are Farm Bureau members.

Ag Law updates

Brook Duer—Staff Attorney

Audry Thompson—Research Assistant

Pesticides: EPA Publishes Final Rule on Pesticide Application Exclusion Zone Requirements

On October 30, 2020, the U.S. Environmental Protection Agency published in the Federal Register a final rule titled “Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements” (85 FR 68760). Among several changes, the rule limits the application exclusion zone (AEZ) requirements to a producer’s own property and allows property owners and immediate family to shelter in place in housing or closed buildings located on the property during pesticide application. The final rule is effective December 29, 2020. For background, see *ALWR—October 31, 2019, “EPA Proposes New Rule on Pesticide Application Exclusion Zone Requirements.”*

COVID-19: CFAP 1 and CFAP 2 Pennsylvania Data

Weekly, USDA updates aggregate Coronavirus Food Assistance Program 1 (CFAP 1) and Coronavirus Food Assistance Program 2 (CFAP 2) payments. The latest available Pennsylvania totals are below:

PENNSYLVANIA CFAP 1 Payments		Approved Applications (as of 10/25/20)
Dairy	\$105,929,673	2,760
Livestock	\$33,965,995	5,869
Non-Specialty Crops	\$22,623,203	5,022
Specialty Crops	\$8,419,929	167
Aqua Nursery Flora	\$1,100,953	23
TOTALS	\$17,039,753	13,841

PENNSYLVANIA CFAP 2 Payments		Approved Applications (as of 10/25/20)
Dairy	\$41,579,672	1,452
Sales Commodities	\$20,317,108	417
Acreage-Based	\$26,140,640	3,023
Livestock	\$12,559,023	2,534
Eggs/Broilers	\$2,585,102	86
TOTALS	\$103,181,544	7,512

Invasive Species: New York Expands Spotted Lanternfly Quarantine and Oregon Detects First Spotted Lanternfly

On October 8, 2020, a revised New York Department of Agriculture and Markets final rule on spotted lanternfly quarantine requirements became effective. The rule simply conforms the list of Pennsylvania counties, from which a certificate of inspection must accompany imported goods, to the list of counties under Pennsylvania's quarantine. Businesses transporting goods from these Pennsylvania counties must possess a spotted lanternfly permit from the Pennsylvania Department of Agriculture (PDA) and inspect and self-certify their shipments. Through a reciprocity agreement, New York has agreed this will satisfy New York's requirements. Also on October 8, 2020, the Oregon Department of Agriculture announced that a dead spotted lanternfly by a nursery in a shipment of ceramic pots and planters from Pennsylvania. Oregon has declined to implement control measures at this time.